

ORIGINAL

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

U.S. DISTRICT COURT NORTHERN DISTRICT OF TEXAS	
FILED	12:35 pm
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CLERK, U.S. DISTRICT COURT	
By	Deputy

JO GONZALES  
Plaintiff

§

§

v.

§ CIVIL ACTION NO. 4:16-CV-291-A

SWAT SGT HILL ET AL,  
Defendant,

§

§

Plaintiff Motion And Brief In  
OPPOSITION To Defendant officers  
Swat Sgt. Hill Et AL. Motion to Dismiss

JOE GONZALES  
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Fort Worth Tx 76119

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

JOE GONZALES §  
Plaintiff, §  
V. §  
SWAT SGT. HILL ET AL. §  
Defendants. §

Plaintiff Motion AND Brief IN OPPOSITION  
TO DEFENDANT OFFICER BRIAN GENTRY AND SWAT  
SGT, ET AL., MOTION TO DISMISS

To The Honorable Judge McBRIDE:

Pursuant to Federal Civil Court rules, P  
Plaintiff files this Motion and brief in opposition  
to the Defendants Motion to Dismiss for  
failure to state a claim. The Plaintiff  
would show the court the following

I. Summary

For the reason that the Plaintiff would  
show that to dismiss for failure to  
state a claim would be inappropriate  
unless it appears that beyond Doubt  
that the Plaintiff can prove no set of facts  
in support of his claim which would  
entitle him to relief.

The Plaintiff would demonstrate by using a two step analysis to determine Qualified immunity 1) viewing the fact in the light most favorable to the Plaintiff whether the violation give rise to Constitutional violation, (Yes) these officers deliberately assaulted the Plaintiff in violation of his 4<sup>th</sup> Amendment being persued by the Fort Worth Police Dept. In a car in which he did not drive, did not "resist" being an arrested and complied with all "orders" given At the time of arrest. The officers Known As Sgt. Hill et Al. began to beat Kick used a butt of a gun (pistol whipped twice) By Officer Gentry which he is not train or Allowed to do. Which WAS watched by 1.9 million of eye witness on social media (video recordings on NEWS Stations and internet). Once it was realed that this incident Known As "police brutality" was being captured by News Chapters and regular Citizens using videos of cell phones SGT Hill instructed All officers "STOP BEATING HIM THIS IS BEING VIDEO TAPED"

Thus it is determined that their Action clearly violation of the Plaintiff rights at the scene. Defendants Motion to dismiss should be denied

A. Plaintiff Original Complaint  
 Plaintiff stipulates that his original complaint against several Fort Worth Police Officers including Officer Brian Gentry. Plaintiff is asking that this issue be set for Trial by. He seeks 136 Million in Damages.

### Qualified Immunity

The doctrine of qualified immunity protect gov. officials from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known *Stanton v. Sims* 134 S. Ct. 3, 4, 187 L. Ed. 2d 341 (2013) (internal quotation marks omitted) In particular the defendant Brian Gentry is not entitled to qualified Immunity as he was the major player in the assault (police brutality) as his action violated the plaintiff Rights when he hit, ("pistol whipped Twice") with the butt of the gun. The burden

is on the Plaintiff to show that these defendants are not entitled to qualified immunity each of these defendant has the opportunity to deliberate various Alternatives prior to electing a course of action their action will be deemed conscience shocking if they were taken with deliberate indifference towards the Plaintiff federally protected rights *Burgess v. Fisher*, 735 F.3d 469, 473 (6<sup>th</sup> Cir 2013) The difference is this. An excessive force claim under the 8<sup>th</sup> Amendment requires that the plaintiff show that Force was not applied in good faith effort to maintain or restore law and order But [w]here defendants are afforded a reasonable opportunity to deliberate [ , ] their actions will be deemed conscience-shocking if they were taken with deliberate indifference towards the Plaintiff federally protected rights *Dorrah v. City of Oak Park*, 255 F.3d 301 (6<sup>th</sup> Cir 2001) the use of foam projectile while in

Police custody violated the Plaintiff federally protected rights of 14<sup>th</sup> Amendment and 8<sup>th</sup> Amendment to the United States Constitution Burgess 735 F.3d at 471.

These Actions of the Defendants were witnessed by 1.9 million media viewers (see ch. 4, 5, 8, 11. Breaking news stories on the day in question) there were over a "Hundred thousand" tweets "Facebook" comments and the Star-Telegram Newspaper articles Gallagher v. CH. Robinson Worldwide Inc. 567 F3d 263, 270 6<sup>th</sup> Cir 2009 (emphasis added)

Scott v Harris 550 U.S. 372 127 S.Ct. 1769, 167 L.Ed 2d (2007)

Rule 56 (c)(1) of the F.R.C.P.  
[a] Party asserting that a fact... is genuinely disputed must support the assertion by... citing to Particular Parts of materials in the record, including depositions, documents, electronically store information, Affidavits or declaration, stipulations (including those made for purpose

of motion only) admissions, interrogatory answers or other materials. That is, a party must go beyond the Pleadings see *CCB Tex Corp. Patrett*, 477 U.S. 317, 324, 106 S. Ct. 2548, 91 L. Ed 2d 265 (1986) ultimately the court evaluates whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law *Anderson v. Liberty*, 743 F.3d 132 *Lobby Inc.*, 477 U.S. 242, 251-52, 106 S. Ct. 2505, 91 L. Ed 2d 202 (1986) The court must draw all reasonable inferences in favor of the non-moving party *Burgess*, 735 F.3d at 471

"The defendant contends that at 'no time' during his official capacity as a Ft. Worth Police Officer (Brain Gentry) did he act 'outside the scope' of his duties as a public official. Brain Gentry used unnecessary force to detain the Plaintiff. The Plaintiff has

alleged throughout all pleadings that 1) he received injuries by the hand of the defendants, 2) which directly resulted from the use of force that was clearly excessive to the need, and the excessiveness of which was 3) objectively unreasonable. *Knight v. Caldwell*, 970 F.2d 1430, 1432-33 (5<sup>th</sup> Cir 1992). In regards to the defendant claim that he had nothing to do with the Pit Maneuver is contradicted by the Swat teams report as to what functions each officers had done. Officer Brian Gentry was present in the vehicle, at the time it was administered, at no time did he express that "They" (F. Worth Swat team) should not perform this maneuver because he nor officer Dennis Alise (Driver of Swat vehicle) were trained in this maneuver and that it is in violation of current



Fort Worth Police Policy. Thus it can be decided that a deliberate indifference to the rights of the Plaintiff were made at that time. The Plaintiff was in a police chase that exceeded (5 mile per hour) for a 2 hour duration as stated above the defendant Gentry excessive force violated the Plaintiff Constitutional Right to the Constitution of the United States, His deliberate indifference in not advising against the use of the PIT Maneuver constitutes having a reasonable opportunity to intervene against it and intentionally fail to do so. *Whitley v. Hanna* 726 F.3d 631, 646, 65<sup>th</sup> Cir 2013)

Dismissal should be denied

A district Courts ruling on a Fed R. Civ. P. 12, (b)(6) Motion is Subject to de novo review

A Motion to dismiss requires the Court to test the formal Sufficiency of the Statement of the Claim For relief. All well pleaded facts must be accepted as "true" and viewed in the light most favorable to the plaintiff. The issue is not whether a Plaintiff will prevail, but whether he is entitled to offer evidence to support his claims accordingly the Court will not dismiss a complaint unless it appears beyond doubt that the Plaintiffs can prove no set of facts in support of his claim which would entitle him relief.

Respectfully Submitted  
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CERTIFICATE OF SERVICE

I hereby Certify that on June 20, 2016  
I Served a copy of this document  
on all parties or their counsel of  
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